



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF  
CHIEF COUNSEL

April 16, 1999

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MEMORANDUM FOR

FROM: Gary D. Gray  
Assistant Chief Counsel (General Litigation)

SUBJECT: Hardship Refund Request of

LEGEND:

Taxpayers  
Service Center X  
Date A  
Date B  
Date C

DISCUSSION:

The National Taxpayer Advocate has issued a Taxpayer Assistance Order (TAO) dated Date A, to the Service Center Director, Service Center X, directing the issuance of a refund to Taxpayers. This TAO was issued because the National Taxpayer Advocate concluded that the Service made a mistake in the process of crediting the account of the Taxpayers for the Date B year with an overpayment from the Date C year rather than refunding the amount to them.

Based on the facts presented, we are not prepared to dispute the National Taxpayer Advocate's implicit conclusion that the mistake constituted a clerical error. Mathematical or clerical errors may generally be undone by the Service. See, e.g., I.R.C. § 6213(b)(1), Matter of Bugge, 99 F. 3d 740, 745 (5<sup>th</sup> Cir. 1996)(unauthorized and accidental abatement of assessment is ineffective); Crompton-Richmond Co., Inc. v. United States, 311 F.Supp. 1184, 1186 (S.D. N.Y. 1970)(when abatement issued because of mistake of fact or bookkeeping error, assessment may be reinstated).

In view of the fact that the Taxpayers' account has already been credited with the amount of the requested refund, we would recommend that the Service obtain the Taxpayers' written agreement that the credit can be reversed leaving a properly

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assessed amount unpaid. This will serve to avoid any future controversy about the account.

cc: Associate Counsel (Domestic)